

APPENDIX B

**PINE STREET BARGE CANAL
COORDINATING COUNCIL**

ORGANIZATIONAL PROTOCOLS

GOAL OF THE COUNCIL

The goal of the Council is to reach consensus on the scope of work for further studies of the Pine Street Site, recommendation of a remedy that is both acceptable to the community and satisfies EPA's and the State of Vermont's statutory and regulatory obligations, and such other subjects as the Council may by consensus agree to consider.

PARTICIPANTS

Interests Represented. Any interest that would be significantly affected by decisions or agreements made by the Council may be represented. Organizations, agencies, companies, and individuals may join with other allied interests to form a caucus to be represented by one or more individuals.

The Coordinating Council. Each organization or interest caucus that is represented on the Council will be deemed a party to the Council and will appoint a designated number of Members of the Coordinating Council.

Alternates for Council Members. Each party may designate one or more alternates for each of its Council Members. Alternates may substitute for Council Members in the event a Member cannot attend a session of the Coordinating Council.

Additional Parties. Additional parties may join the Council after its initial formation only with the concurrence of the Council.

Constituents' Interests. Members are expected to consult with their constituents and colleagues and to raise their interests and concerns during the discussions of the Council.

DECISION MAKING

Decisions by Consensus. The Council will make decisions by consensus. For these purposes, consensus means that decisions are made only with the concurrence of all Members present at the meeting where the issue is considered. Unless otherwise determined by the Council, consensus agreements reached during the course of deliberations will be considered tentative agreements until the Council has reached final agreement on the scope of work and such other subjects as the Council agrees to consider. Members will be given reasonable opportunity to consult with their constituents prior to a final agreement.

EPA Responsibility and Intent. The parties recognize that under the Appointments

Clause of the Constitution, governmental authority may be exercised only by officers of the United States and that it is EPA's sole responsibility to make various decisions under CERCLA. Any final agreement of the Council represents a good faith statement of the action that EPA intends to take, and not the final Agency decision in the matter. EPA intends to make its final decisions in a manner consistent with the final agreements of the Council, subject to its legal obligations and any limitations on its discretion imposed by law.

If the Coordinating Council reaches a final decision as to a matter which EPA is required to publish formally for public comment (for example, a proposed plan for remedial action), the Council will reconvene as necessary following the close of the public comment period to consider significant comments received. Following the Council's consideration of those comments, and fully considering any recommendations that the Council may make, to the extent consistent with EPA's legal responsibilities, EPA will consider and respond to significant comments received during the public comment period and will make such modifications as are appropriate under the circumstances (for example, in issuing a Record of Decision). When the Council considers the comments, EPA will participate in the discussions, but EPA's concurrence shall not be required for the Council to make a recommendation.

Agenda. A draft agenda for each meeting will be prepared by the facilitator after consultation with the Council Members. The agenda will be approved by consensus.

Workgroups. Workgroups may be formed to address specific issues and to make recommendations to the Council as a whole. Workgroups are open to any Council Member or the Member's designee, plus such other individuals as the Council agrees will enhance the functioning of the workgroup. Workgroups are not authorized to make decisions for the Council. All Council Members will be notified of all workgroup meetings.

AOC Negotiations. Representatives of the PRPs, the State, and EPA will periodically inform the Council of the status of their independent concurrent negotiations of an Administrative Order of Consent (AOC).

AGREEMENT

Written Statement. Any final agreement will take the form of a written statement that will be signed by the Members who are appropriately authorized by the parties they represent.

Support of Agreements. The Members and the parties represented by the Members agree to proceed in good faith to support and effect the terms of any final agreement reached pursuant to these protocols. Each such party agrees not to file formal comments which are inconsistent with the express terms of a final agreement.

PROCEDURES

Open Meetings. Meetings of the Council will be open to the public.

Attendance at Meetings. Each Member of the Council agrees to make a good faith effort to attend every meeting. The Member may be accompanied by such other individuals as the Member believes is appropriate to represent the interests of the Member's constituents. Only the Member will have the privilege of sitting at the table and speaking during the discussions without the approval of the Council, except that a Council Member may call upon an adviser to elaborate on a relevant point. The Council may invite others to attend the meetings when resource people are needed or for other purposes.

Meeting Summaries. Meeting summaries will be prepared for the convenience of the Council. Such summaries will not be approved by the Council, and such summaries and any electronic recordings of meetings will not be construed as representing the official position of the Council or any Member of the Council as to what transpired at the Council meetings. In addition, the summaries will announce future meetings of the Council. The summaries will be made available to the public on request unless the Council agrees that summaries of specific meetings or parts of meetings be held as confidential.

Caucus. Two or more members of the Council may confer privately during or after a Council meeting as they consider appropriate. The facilitator may also confer privately with members of the council during or after Council meetings.

Good Faith. All parties agree to act in good faith in all aspects of these discussions. Specific offers, positions, or statements made during the discussions may not be offered or admitted into evidence or the record of any judicial or administrative proceeding by other parties for any other purpose not previously agreed to in writing by the parties involved. It is the intent of the Council that other attendees of the meetings voluntarily comply with this provision in order to support the dialogue process by encouraging the free and open exchange of ideas, views, and information prior to achieving consensus. Personal attacks and prejudiced statements will not be tolerated.

Right to Withdraw. Any party may withdraw from the discussions at any time without prejudice. The remaining Council Members will then decide whether to continue the discussions.

Others' Positions. No Member will characterize or make a comment publicly concerning the position of any other Member even if that Member withdraws from the Council.

Facilitator. A neutral facilitator will work with all the participants to ensure that the process runs smoothly. The facilitator serves at the will of the Council and may be replaced by another or the role eliminated entirely as determined by the Council. The role of the facilitator usually includes developing draft agendas, focusing meeting discussions, working to resolve any impasses that may arise, preparing meeting summaries, assisting in the location and circulation of background materials and materials the Council develops, acting as a spokesperson for the Council as a whole, and such other functions as the Council requests.

SIGNATORIES

The undersigned signatory is appropriately authorized to execute these protocols on behalf of the party or parties listed beneath the signature.

Name: _____

Party: _____

Date: _____

